IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MINA ORTEGA,

       Plaintiff,

v.   No. 18cv111 KK

NEW MEXICO LEGAL AID, INC.,
ED MARKS, individually and as
Director of New Mexico Legal Aid, Inc.,
SIEMPRE UNIDOS EN PROGRESO,
a Unit of National Organization of Legal
Services Workers ("NOLSW")/UAW
Local 2320 International United Auto Workers,
AFL-CIO, DONIS BORKS, individually and
as Union Organizer, GORDON DEANE,
individually and as Union President, and
ALICIA CLARK, individually and as Grievance
Chair for Siempre Unidos en Progreso,

       Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

THIS MATTER comes before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed February 2, 2018 ("Application"). For the reasons set forth below, the Court will **GRANT** Plaintiff's Application.

Application to Proceed *in forma pauperis*

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

> When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted.

> Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). "[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant's present financial status." *Scherer v. Kansas*, 263 Fed.Appx. 667, 669 (10th Cir. 2008) (citing *Holmes v. Hardy,* 852 F.2d 151, 153 (5th Cir.1988)). "The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs...." *Adkins v. E.I. DuPont de Nemours & Co.,* 335 U.S. 331, 344 (1948). While a litigant need not be "absolutely destitute," "an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life." *Id.* at 339.

The Court will grant Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff signed an affidavit declaring that she is unable to pay the costs of these proceedings and provided the following information: (i) her average monthly income during the past 12 months was $1,131.35; and (ii) her monthly expenses total $1,133.00. The Court finds that Plaintiff is unable to pay the filing fee because she signed an affidavit stating that she is unable to pay the costs of these proceedings, and because her monthly expenses slightly exceed her low monthly income.

Service on Defendants

Section 1915 provides that the "officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]"). 28 U.S.C. § 1915(d). Rule 4 provides that:

> At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court.

The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c)(3).

The Court will not order service of Summons and Complaint on Defendants at this time.

The Court cannot serve process because Plaintiff has not provided the Defendants' addresses.

The Court will order service if Plaintiff provides the Court with Defendants' addresses.

IT IS ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed February 2, 2018, is **GRANTED.**

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KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE